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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,979	12/01/2003	Jochim Koch	71131	4934

23872 7590 02/08/2005  
MCGLEW & TUTTLE, PC  
1 SCARBOROUGH STATION PLAZA  
SCARBOROUGH, NY 10510-0827

EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/725,979	Applicant(s) KOCH, JOCHIM	
	Examiner Nihir Patel	Art Unit 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on December 2<sup>nd</sup>, 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 8, 18, 22, 24, 26, 30, 31 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 2, 6, 7, 9-12, 15, 16, 19-21, 23, 25, 27-29 and 32-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed on December 2<sup>nd</sup>, 2004, with respect to claims 1, 3, 4, 5, 22, 24, 28, 30 and 31 have been fully considered and are persuasive. The previous office action dating back to October 4<sup>th</sup>, 2004 has been withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 8, 18, 22, 26, 35, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine US Patent No. 1,983,475 in view of Conzen Non Patent Document (Degradation of Inhalation Anaesthetics by CO<sub>2</sub> Absorbers). Referring to claims 1 and 5, Lemoine discloses the applicant's invention as claimed with the exception of using calcium hydroxide as the carbon dioxide absorber. Conzen refresher courses on degradation of inhalation anaesthetics by CO<sub>2</sub> absorbers does state that calcium hydroxide can be used as a CO<sub>2</sub> absorbers (see lines 1 and 2 on page 1). Therefore it would have been obvious to modify Lemoine's invention by using calcium hydroxide as the carbon dioxide absorber in order to improve the removal process of carbon dioxide.

Referring to claims 1 and 3, after reviewing the applicant's specification, the examiner found no criticality in the applicant's specification on why the gas flow volume rate must be at

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least 60 L per minute. Therefore the examiner comes to conclusion that the flow rate is simply a matter of design choice and based on the patient's breathing cycle.

Claims 4, 24, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemoine US Patent No. 1,983,475 in view of Grabenkort US Patent No. 5,487,380. Referring to claims 4 and 24, Lemoine discloses the applicant's invention as claimed with the exception of providing a gas delivery means that is a positive displacement blower driven electrically or by compressed gas. Grabenkort discloses an exhaust gas filter and cooler that does provide a gas delivery means that is a positive displacement blower driven electrically or by compressed gas. Therefore it would have been obvious to modify Lemoine's invention by providing a gas delivery means that is a positive displacement blower driven electrically or by compressed gas in order to increase the cooling process.

***Allowable Subject Matter***

Claims 2, 6, 7, 9-12, 15, 16, 19-21, 23, 25, 27-29 and 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272-4791.

NP

February 7<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700